THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition Nos.
20519, 20521, 20523, 20569, 20570 and 20571 of 2004

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COMMON ORDER *(Per the Hon'ble Sri Justice Bilal Nazki):*

All these matters raise the same questions of law. The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad passed a circular dated 04-06-2004, which reads as under:

"Office of the Commissioner of Commercial Taxes,
Andhra Pradesh: Hyderabad.

CIRCULAR

CCT'S REF.NO.AI(1)/326/2004 Dated 4-6-2004

Present: Sri V.Bhaskar, I.A.S. Commissioner of Commercial Taxes

Sub:- APGST Act, 1957-Telephone and Cell Phones levy of turnover Tax-Clarification-Reg.

Ref:- CCT's Ref.No.AI(1)/2764/2002, dt.18-2-2003.

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The attention of all the DCs (CT) in the State is invited to the reference cited (copy enclosed). They are informed that Telephones and Cell Phones fall under item 11 of 1st Schedule to the APGST Act, 1957. Hence, turnover tax is leviable on the subsequent sales of Telephones and Cell Phones. These instructions are issued in supercession of the clarification issued in the reference cited above and shall be complied with prospectively.

Sd/-T.VIVEK
for Commissioner of Commercial Taxes"

The petitioners are aggrieved of this circular on two grounds. Firstly, the Commissioner has no power to issue the circular; and

secondly, since various authorities under the Andhra Pradesh General Sales Tax Act, 1957 are quasi judicial authorities, they have to decide the matters on the basis of appreciation of facts and law in each case and the Commissioner has prejudged the issue and directed that the matters coming before the assessing authority should be decided in a particular way. Earlier also, this Court has interfered in such matters and we feel that the Commissioner of Commercial Tax had no authority to issue such a circular which prejudges the issues which may arise between the assessees and the department. Therefore, these writ petitions are allowed directing the assessing authorities not to take into account the impugned circular and whenever matters come before them, decide them in accordance with law independently. However, the assessing authorities are given liberty to issue fresh notices, if they so feel, to the assessees in accordance with law subject to condition that the assessing authorities shall not take into consideration any objection as far as limitation is concerned for the period for which the stay granted by this Court remained operative. No order as to costs.

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(Bilal Nazki,J)

Dated 3rd April, 2007

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(Nooty Ramamohana Rao,J)

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